

973rd Meeting of the Forum for Security Co-operation  
28 April 2021  
Agenda Item 1

**Presentation by Mr. Arman TATOYAN  
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**Forum for Security Cooperation Security Dialogue on  
Compliance with International Humanitarian Law**

**28 April 2021**

Mr. Chairman,  
Excellences, distinguished ladies and gentlemen,

It is an honor for me to address you today on behalf of the Armenian National Human Rights Institution and I would like to thank the Armenian FSC Chairmanship for inviting me and giving me this opportunity to share with such a distinguished audience some of my observations as Human Rights Defender on the issue of International Humanitarian Law during conflicts.

From the beginning I should say that I attach a particular significance to the participation of human rights defenders at such meetings which should be considered as contribution of national human rights institutions to the overall protection and promotion of human rights.

Our approach to human rights protection in the context of conflicts is based on the major premise of universality of human rights of all people and their protection, and no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory on which they live. This notion is reflected in the Universal Declaration of Human Rights.

Human rights are key to the OSCE concept of comprehensive, indivisible and cooperative security. Using this opportunity, I would like to highlight **the excellent existing cooperation between** our institution and OSCE executive structures, in particular ODIHR.

The overarching concept of protecting human rights, including in times of conflict, is the foundation on which the International Human Rights Law is built upon.

The important role of national human rights institutions and ombudspersons in the protection and promotion of human rights in national contexts is widely acknowledged. At the same time the state authorities have a positive obligation of incorporating human rights standards, as well as international human rights norms and principles in the national legislative and regulatory frameworks. Moreover, these norms, principles and standards, including those of International Humanitarian Law, should become an inalienable part of code of conduct of state security and military forces, including through their incorporation in curricula of respective education and training.

On the one hand, we have an extensive body of norms of IHL mandatory for implementation by states, while on the other hand, as usually the case with multilateral instruments, their application is limited by the readiness of states to respect and upheld the respective commitments and obligations. Subsequently, this creates a certain handicap with regards to the implementation.

In this context the role of human rights defenders as well as relevant civil society organizations should not and could not be overlooked as watchdogs, as important oversight mechanisms or tools to ensure the implementation of States commitments and obligations.

In times of conflicts the work of Human Rights Defenders aimed at monitoring the implementation of Humanitarian Law is indispensable for recording, reporting and presenting the breaches of International Humanitarian Law and International Human Rights Law.

At a time when along with existing conflicts we see the emergence of new ones, accompanied by widespread human rights violations and resulting in humanitarian crises, the significance of human rights protection in any territory is essential and, here is where the role of the National Human Rights Institutions becomes ever more vital. I should perhaps also emphasize the important work that the OSCE conflict-related mechanisms and agreed formats could carry out.

Mr. Chairman,

It goes without saying that the IHL should be applied in all cases to protect civilians and persons hors de combat and lessen unnecessary harm during armed conflict. This role of IHL becomes ever more important taking into account the evolving means and methods of warfare.

As the National Human Rights Institution, the Human Rights Defender of Armenia is entrusted with a broad mandate to promote and protect human rights in all circumstances and without exceptions, including in conflict and post-conflict situations. The Human Rights Defender is mandated also to report on IHL violations.

Today I would like to share with you the work that the Office of the Ombudsman of Armenia has been carrying out in cooperation with the Human Rights Ombudsman of Artsakh since the outbreak of war against Artsakh in September 2020. The consequences of the war have been further aggravated by the COVID-19 pandemic, resulting in rapid spread of the deadly virus instigated by the collapse of the healthcare system, which in turn exacerbated the sufferings of the people. As a result of the war around 130 thousand people were displaced.

The protection of the civilian population during the armed conflicts is the absolute requirement of the IHL. According to the general rules of protection of the civilian population, individual civilians shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. The indiscriminate attacks or the targeted attacks towards civilian settlements infringe the right to life and health of civilians and are in absolute violation of the principles of international humanitarian law.

The Geneva Conventions and other international treaties and conventions, such as Convention on Cluster munitions, Convention on Certain Conventional Weapons, as well as the customary humanitarian law limit the right to choose the methods and means of warfare, prohibiting the use of weapons which may cause superfluous injury or unnecessary suffering, or damage military objectives and civilians or civilian objects without distinction. Thus, international legal instruments and customary international law prohibits the use of cluster munition, considering them lethal and inhumane. These types of munitions have indiscriminate effects, endanger the lives and health of the civilian population, and cause additional damage and suffering.

As reported by the Artsakh Ombudsman, the indiscriminate attacks on civilian settlements and infrastructure with the use of high-precision weapons and such banned munitions as cluster bombs and white phosphorus, caused casualties among the peaceful civilian population and major damages to the civilian infrastructure. This resulted in an unprecedented humanitarian disaster, violations of International Human Rights Law and Humanitarian Law, which some experts qualified as amounting to war crimes.

The banned weapons, including cluster munitions and chemical/incendiary weapons, were used against the civilian population of Artsakh during the war. In particular, LAR-160 and Smerch cluster-warhead missiles were used against civilian settlements of Artsakh, including the capital city of Stepanakert.

Moreover, during the war, Azerbaijan used different types of combat unmanned aerial vehicles, *such as Harop, Zaoba-1K, Sky Striker, Bayraktar TB-2, AN-2*, clearly violating the principles of necessity and proportionality of IHL. Drone strikes were carried out against borderline settlements and densely populated areas of Syunik and Gegharkunik provinces of Armenia as well, resulting in casualties among civilian population, with one civilian killed and three injured, including a 14 year old child.

Under international humanitarian law, parties to an armed conflict must at all times distinguish between civilians and combatants, and between civilian settlements and military objectives. Lethal drone strikes against a military objective will be unlawful if the incidental harm caused to civilians is excessive in relation to the concrete and direct military advantage anticipated. No distinguishing has been done by the Azerbaijani armed forces.

The use of **incendiary munitions** is prohibited under the 1980 Protocol on Incendiary Weapons, that restricts use of incendiary weapons as a means or method of warfare during armed conflict, prohibiting its use against civilians and civilian communities. Customary IHL prohibits the use of incendiary weapons against civilian objects as well. Under the rule of distinction, in the conduct of hostilities, parties must target only lawful military objectives and never civilians or civilian objects.

The incendiary munitions containing chemical elements (possibly white phosphorus) used by the Azerbaijani Armed Forces against Artsakh is “Incendiary weapon” in the meaning of the Protocol. They were mainly used in forest areas close to civilian settlements thus having long-term inevitable effects to the life and health of the civilian population.

Under international humanitarian law (Additional Protocol 1), **journalists** engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians and thereby benefit from all the protection conferred by international humanitarian law on civilians. Their activities in conflict zones and war/military attacks have legitimate purposes and are under international protection.

Several cases of deliberate attacks by Azerbaijani military on international and local media representatives/journalists were registered already in the first days of the war.

There is an **absolute ban on torture and other cruel**, inhuman or degrading treatment and outrages upon personal dignity under international humanitarian law (IHL) and international human rights law (IHRL).

The 1949 Geneva Convention I as well as customary IHL contain norms on treating with respect the wounded and sick, as well as prohibit murder and execution of captives. Geneva Convention III and IV specify this rule and prohibit the murder of POWs and the protected persons in the custody of parties to the conflict.

However, substantial evidence, including numerous video footage disseminated via social media, attest to cases of arbitrary executions, brutal killings and beheadings of captives at the hands of Azerbaijani troops.

*(Example: video of atrocities depicts how members of the Azerbaijani Armed Forces cut off the head of G. Petrosyan (the whole process is illustrated in the video), put his severed head on the body of a dead animal, apparently a pig. In addition to that, one of the soldiers tells others “to go and to bring petrol and burn”. Furthermore, in the same video one of the members of the Azerbaijani Armed Forces puts his foot on the chest of the beheaded body of the ethnic Armenian and brutally pushes it squeezing out blood from the severed neck).*

At the moment the issue of Prisoners of War remains one of the most pressing problems. The IHL norms stipulate that PoWs must be released and repatriated without delay after the cessation of active hostilities (Article 118 of Geneva Convention III). Civilian internees must be released as soon as the reasons which necessitated internment no longer exist, or as soon as possible after the cessation close of active hostilities. International humanitarian law prohibits unjustified delays in the release of PoWs, and it considers any such delay as constituting a “war crime”.

It is a matter of grave concern that the Azerbaijani side not only continues to detain the captured PoWs and civilians but most importantly refuses to reveal the exact number of prisoners of war it has in its custody. Azerbaijan refuses to release this information to the ICRC as well.

The Defender also cooperates with the ICRC on issues concerning the return of prisoners of war and civilian captives in line with IHL requirements. However, our cooperation is not limited only to this issue, but rather aims to protect and assist all victims of the armed conflict. We hope that the ICRC’s work aimed to address the humanitarian consequences of the war would not be obstructed further and it would have a possibility to conduct its humanitarian mission properly.

All the violations of IHL and human rights violations, such as right to life, health, property, etc, were recorded by the Defender and his team through fact-finding and monitoring activities. The cases of grave breaches of human rights law, international humanitarian law and customary IHL have been presented as Human Rights Defender’s ad hoc reports and official letters to international human rights organizations. We shared the results of our findings with our partners on a bilateral level as well and I urge relevant authorities to look into them with the view of addressing the impact of IHL violations on the human rights situation in general.

From September 27 2020 to January 28, 2021, the civilian population of Artsakh suffered 72 losses: 41 killed as a result of targeted strikes, 31- in captivity. 163 civilians were injured.

Up to now a high number of Armenian POWs remain in captivity in Azerbaijan and their return is artificially delayed. Moreover, there are criminal proceedings against the Armenian servicemen in captivity in Azerbaijan, who are being presented as “terrorists”.

Another aspect that I would like to mention is the protection of cultural heritage. This is a particularly sensitive aspect in the case of armed conflicts with an ethnic, cultural or religious character. It should be stressed that in all phases of an armed conflict, regardless of its character, the cultural heritage as a whole continues to enjoy legal protection.

The law of armed conflict, a *lex specialis* in time of war, expressly regulates the protection of cultural property. In other words, the cultural property and historic monuments enjoy both general and special protection. To the extent that cultural property is civilian, it may not be made the object of attack. The respect for cultural property is of paramount importance as this rule and the 1954 Hague Convention are widely regarded as reflecting customary international law.

The results of studies on attacks against the Armenian cultural heritage in Artsakh includes cases of vandalism against churches, cross-stones, and graves, deliberately erasing Armenian texts from them. The attacks and destruction of the cultural monuments were carried out since the first days of the war and continued after cessation of the hostility.

Since the outbreak of the war the issue of protecting cultural and religious heritage sites in Karabakh has been on the Defender's radar and we regret that up to now the UN specialised body - the UNESCO - is unable to dispatch its mission to assess the situation on the ground.

*Info: On October 8, one of the historical symbols of Armenian architecture the St. All Savior Ghazancetsots Church of Artsakh was bombarded twice. The Church is located in the center of the city and surrounded by civilian objects, residential buildings, and there is no military object nearby. The Armenian Church in the Mekhakavan community was completely destroyed after it came under Azerbaijani control. It was also confirmed that the church of St. John the Baptist, popularly known as "Green Hour" in the Azerbaijani-controlled town of Shushi, had been destroyed. The church was destroyed not during the armed attacks, but afterwards. Those examples are numerous.*

Mr. Chairman,  
Ladies and Gentlemen,

To some-up one can state that despite the extensive body of IHL instruments, norms and principles, we lack effective mechanisms for ensuring the enforceability of IHL in order to prevent its violations.

The obligation to "ensure respect" for IHL is not limited to behaviour by parties to a conflict, but includes the requirement that States do all in their power to ensure that international humanitarian law is respected universally.

Establishment of universal jurisdiction at national level over grave breaches of IHL and investigation of war crimes falling within their jurisdiction, as well as creation of international enforcement mechanisms could contribute to this end.

For the investigation purposes, the ICRC Guidelines On investigating violations of IHL fairly define that reporting, setting forth a uniform investigative process for all States plays a key role in ensuring compliance. The purpose of reporting, both at national and international levels, is to draw attention to an incident which, in turn, may trigger the steps necessary for launching an investigation. And here the role of NHRIs, NGOs, media is highly important, even though the primary responsibility for ensuring proper investigation and reporting lies with state authorities.

The respect for IHL norms should become an integral part of *modus operandi*, therefore, relevant trainings for armed and security forces will help raise awareness among military and security personnel thus contributing to proper implementation of IHL and state commitments and obligations contained therein.

In this regard, we should welcome the increasing number of national commissions and other bodies involved in advising authorities at the national level on the implementation, dissemination and development of international humanitarian law.

I thank you for your attention, and thank you again for inviting me to participate in this important discussion.